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COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

CONCORD CONCRETE PUMPS, INC.,

Appellant/Defendant,

v.

RALPH'S CONCRETE PUMPING, INC.,

Respondent/Plaintiff.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE PALMER ROBINSON
King County Superior Court No. 08-2-02714-7 SEA

OPENING BRIEF OF APPELLANT/DEFENDANT
CONCORD CONCRETE PUMPS, INC.

RIDDELL WILLIAMS P.S.
Gavin W. Skok, WSBA No. 29766
Mindy L. DeYoung, WSBA No. 39424
Christopher Schenck, WSBA No. 37997
1001 Fourth Avenue, Suite 4500
Seattle, Washington 98154-1065
Telephone: (206) 624-3600
Attorneys for Appellant/Defendant
Concord Concrete Pumps, Inc.

ORIGINAL

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I. INTRODUCTION

This appeal concerns the entry of default and a default judgment against a Canadian corporation, Concord Concrete Pumps Inc. ("Concord"), and in favor of Ralph's Concrete Pumping, Inc. ("Ralph's") in a lawsuit arising from Ralph's purchase of a concrete pump manufactured by Concord.

Concord maintains no presence in Washington State. Ralph's sought to invoke long-arm jurisdiction over Concord pursuant to RCW 4.28.185. That statute authorizes a single method of out-of-state service – personal service – for use by a plaintiff seeking to invoke long-arm jurisdiction. RCW 4.28.185(2). The statute is expressly clear that such service shall be valid only when a plaintiff establishes by affidavit that service cannot be made within the state. RCW 4.28.185(4). Because out-of-state service is in derogation of the common law, those requirements are strictly construed.

Ralph's attempted to serve Concord with process out of state by simply mailing process to Concord in Canada, via an incorrectly addressed mailing. Ralph's never made the statutorily-required affidavit attesting that in-state service could not be made, nor did it accomplish – or even attempt – personal service on Concord. By the plain terms of the statute,

proper service was never accomplished and long-arm jurisdiction never attached.

Even if proper service had been accomplished, which it was not, Concord would not have sufficient minimum contacts with Washington State to be subject to personal jurisdiction in its courts, rendering any entry of default or default judgment void.

Concord specially appeared and moved to vacate the entry of default and default judgment for exactly those reasons. The King County Superior Court denied Concord's motion on a form order without explanation and without making any findings as to the basis for jurisdiction over Concord in Washington. The King County Superior Court's refusal to vacate the void default and judgment was error.

This Court should (i) reverse the King County Superior Court's Order Denying Defendant's Motion to Vacate Default Judgment and Set Aside Entry of Default, (ii) vacate the default judgment and entry of default, (iii) dismiss Ralph's complaint for lack of jurisdiction over Concord, and (iv) award Concord its fees and costs pursuant to RCW 4.28.185(5).

II. ASSIGNMENTS OF ERROR

Assignment of Error:

The trial court erred in denying Concord's Motion to Vacate Default Judgment and Set Aside Entry of Default.

Issues Pertaining to Assignment of Error:

(1) Does Ralph's failure to make the affidavit required under Washington's long-arm statute, RCW 4.28.185(4), render its attempted service invalid and prevent long-arm jurisdiction from attaching, thereby voiding the entry of default and default judgment against Concord?

(2) Does Ralph's failure to personally serve Concord in accordance with RCW 4.28.185(2) render its attempted service invalid and prevent long-arm jurisdiction from attaching, thereby voiding the entry of default and default judgment against Concord?

(3) Does Concord lack sufficient contacts with Washington State such that the trial court did not have specific jurisdiction over it?

(4) Is Concord entitled to attorney's fees under RCW 4.28.185(5)?

III. STATEMENT OF THE CASE

A. Concord's Lack of Connection to Washington State

Concord is a family-owned Canadian business that manufactures and sells concrete pump trucks for use in various industrial and

construction applications. CP at 39-40. Concord maintains its corporate headquarters in Port Coquitlam, British Columbia, Canada. CP at 39.¹

Concord is not a resident of the State of Washington. CP at 40. Concord is not registered to do business in Washington. CP at 40. Concord does not have a registered agent appointed to accept service in Washington. CP at 40. Concord has no offices in Washington State. CP at 40. Concord has no employees in Washington State. CP at 40. Concord maintains no bank accounts or other property in Washington State. CP at 40. Concord has never been a party to any lawsuit in any Washington State court (other than this one), and has never submitted itself to the jurisdiction of Washington courts in any proceeding. CP at 40.

B. Sale of a Concord Concrete Pump to Ralph's by a Third Party

The sale of the concrete pump at issue in this lawsuit was solicited by an independent concrete pump broker named Don Carlson. CP at 41. Mr. Carlson was not at that time, and never has been, a Concord employee. CP at 41. Acting on his own behalf and at his own initiative, Mr. Carlson contacted Ralph's to solicit a sale, then negotiated the terms

¹ Port Coquitlam is to be distinguished from Coquitlam, a different city in

of the sale with both sides (Ralph's and Concord). CP at 41. Mr. Carlson took possession of the concrete pump from Concord outside of Washington and delivered it to Ralph's in Washington. CP at 41. Concord did not directly communicate or negotiate with Ralph's to arrange or accomplish the sale. CP at 41.

C. Ralph Files its Superior Court Case and Attempts Service by Mail

On January 11, 2008, Ralph's filed a Complaint against Concord in King County Superior Court. CP at 1-4. In the Complaint, Ralph's alleges that it purchased a 2007 model year concrete pump, but was delivered a 2006 model year concrete pump. CP at 2-3. Ralph's alleges damages in excess of \$100,000. CP at 3.

On February 11, 2008, counsel for Ralph's attempted to serve Concord by mailing the Summons and Complaint to Concord via Federal Express. CP at 9.² The cover letter accompanying that mailing stated that "[y]ou are being served under the provisions of RCW 4.28.185 and Washington Court Rule 4(i)(D)." CP at 43. Ralph's did not even address its mailing to the correct place or person. The mailing was addressed to

British Columbia, Canada.

² As discussed below, Ralph's did not make the required affidavit under RCW 4.28.185(4) prior to attempting to mail service.

“Coquitlam, B.C.” instead of to Concord’s headquarters in Port Coquitlam, an entirely different city in British Columbia. CP at 39-40, 43. The cover letter accompanying the mailing was addressed to “ATTN: Isadore Flores” with the salutation “Dear Madam.” CP at 43. There is no Ms. Isadore Flores employed by Concord. CP at 40.

Ralph’s never personally served Concord with the Summons and Complaint in Washington State. CP at 40. Ralph’s also never personally served Concord with the Summons and Complaint at Concord’s Canadian headquarters in British Columbia. CP at 40.

It is undisputed that Ralph’s made no affidavit pursuant to RCW 4.28.185(4) to establish that service on Concord can not be made in Washington, either prior to attempting service or at any time prior to entry of the judgment. No such affidavit is included in the court docket or records of this proceeding, and Ralph’s did not claim otherwise in the Superior Court. CP at 64.

D. The Default Judgment and Concord’s Motion to Vacate and Set Aside

Ralph’s sought and obtained entry of an order of default against Concord on May 21, 2008. CP at 13-14. Ralph’s then obtained a default judgment against Concord on October 2, 2008. CP at 24-26. Ralph’s attempted to enforce that judgment in February 2009 by seizing a Concord

concrete pump truck at a trade show in Nevada. CP at 40-41. The pump truck was released after Concord posted a \$180,000.00 cash bond. CP at 40-41.

On February 10, 2009, Concord made a special appearance to seek an order vacating and setting aside the default judgment. CP at 27-37. In its Opposition to Concord's motion, Ralph's argued that it had made proper service on Concord under Washington Superior Court Civil Rule 4(i), and that Concord had sufficient minimum contacts with Washington. CP at 62-64. Ralph's also argued that it did not need to comply with the RCW 4.28.185(4) affidavit requirement. CP at 64.

On March 31, 2009, the King County Superior Court denied Concord's motion to vacate in a short form order that includes neither any analysis nor any findings on jurisdiction. CP at 154-56.

On April 7, 2009, Concord filed a timely appeal of the King County Superior Court's decision. CP at 157-62.

IV. STANDARD OF REVIEW

The Court of Appeals reviews *de novo* the trial court's denial of a motion to vacate a default judgment for lack of jurisdiction. ShareBuilder Sec. Corp. v. Hoang, 137 Wn. App. 330, 334, 153 P.3d 222 (2007). See also Crosby v. Spokane County, 137 Wn. 2d 296, 301, 971 P.2d 32 (1999)

(whether a court has jurisdiction is a question of law subject to *de novo* review).

V. ARGUMENT AND AUTHORITY

A. The Default Judgment is Void Because Ralph's Failed to Comply With the RCW 4.28.185(4) Affidavit Requirement, Preventing Jurisdiction From Attaching; the Trial Court Erred in Holding Otherwise.

Ralph's attempted to obtain jurisdiction over Concord pursuant to Washington's long-arm jurisdiction statute, RCW 4.28.185. That statute authorizes Washington courts to exercise long-arm jurisdiction over non-resident defendants who are personally served outside of the state under certain circumstances.

Subsection 4 of the long-arm statute requires a plaintiff to file an affidavit showing that service within Washington is impossible before out-of-state service is authorized. Without it, service is invalid: "Subsection (4) of the statute . . . conditions the validity of out-of-state service on the filing of the affidavit." Schnell v. Tri-State Irrigation, 22 Wn. App. 788, 790, 591 P.2d 1222 (1979). See also RCL Northwest, Inc. v. Colorado Resources, Inc., 72 Wn. App. 265, 270, 864 P.2d 12 (1993) ("The validity of out-of-state service is conditioned on the filing of an affidavit that service cannot be made within the state. RCW 4.28.185(4).")

Because out-of-state service “is of purely statutory creation and is in derogation of common law,” the long-arm statute is strictly construed. Hatch v. Princess Louise Corp., 13 Wn. App. 378, 379, 534 P.2d 1036 (1975). That strict construction applies to the affidavit requirement. Boyd v. Kulczyk, 115 Wn. App. 411, 415, 63 P.3d 156 (2003).

It is undisputed that Ralph’s did not file the affidavit required by RCW 4.28.185(4) before attempting service on Concord, or at any point before the default judgment was entered.

When a plaintiff fails to make the affidavit required by RCW 4.28.185(4) before the entry of a default judgment, that judgment is void for lack of personal jurisdiction. Morris v. Palouse River & Coulee City Railroad, Inc., 149 Wn. App. 366, 372, 203 P.3d 1069 (2009) (attempted out-of-state service under RCW 4.28.185 invalid when plaintiff failed to comply with RCW 4.28.185(4) affidavit requirement); ShareBuilder Sec. Corp., 137 Wn. App. at 335 (“If a plaintiff has not complied with RCW 4.28.185(4), then there is no personal jurisdiction and the judgment is void.”); Boyd, 115 Wn. App. at 415 (“Filing of the required affidavit [under RCW 4.28.185(4)] must precede the entry of judgment, or the judgment is void.”) (citing Barer v. Goldberg, 20 Wn. App. 472, 482, 582 P.2d 868 (1978)); Schnell, 22 Wn. App. at 791-92 (vacating default

judgment against out-of-state defendant due to plaintiff's failure to file RCW 4.28.185(4) affidavit before personally serving outside of the state); Hatch, 13 Wn. App. at 380 (default judgment was void for failure to file RCW 4.28.185(4) affidavit).

The trial court's refusal to vacate the default judgment was accordingly in error, and its decision should be reversed. ShareBuilder Sec. Corp., 137 Wn. App. at 335 ("ShareBuilder did not comply [with RCW 4.28.185(4)], and the trial court erred when it refused to vacate the [default] judgment on that basis."); Boyd, *supra*.

B. Ralph's Failure to Personally Serve Concord in Accordance With RCW 4.28.185(2) Leaves the Court Without Jurisdiction and Renders the Default Judgment Void.

Washington's long-arm statute, RCW 4.28.185, specifies a single manner of serving a foreign defendant – personal service – to invoke long-arm jurisdiction under the statute. RCW 4.28.185(2) states that "[s]ervice of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the defendant outside this state, as provided in RCW 4.28.180, with the same force and effect as though personally served within this

state.”³ RCW 4.28.185(2) (emphasis added). As one commentator succinctly explained:

The long-arm statute, RCWA 4.28.185, specifies the methods of service when the plaintiff is relying upon the long-arm statute as the basis for the requisite minimum contacts on which to base personal jurisdiction. **The statute requires personal service**, inside or outside the state of Washington. **The long-arm statute does not authorize service by publication or mail.**

Karl B. Tegland, 14 Wash. Prac. Civil Proc. § 8.15 at 213-14 (2008) (emphasis added).

As discussed above, out-of-state service is in derogation of the common law and therefore the long-arm statute – including its personal service provision – is strictly construed. Accordingly, jurisdiction may not be taken over a foreign defendant except under the terms permitted in the statute, i.e., by personal service. See Deutsch v. West Coast Mach. Co., 80 Wn. 2d 707, 711, 497 P.2d 1311 (1972) (“It is well established in this state that under the long-arm statute, RCW 4.28.185, our courts may assert jurisdiction over nonresident individuals and foreign corporations to the extent permitted by the due process clause of the United States

³ Indeed, the long-arm statute is titled “**Personal service** out of state -- Acts submitting person to jurisdiction of courts -- Saving.” RCW 4.28.185 (emphasis added).

Constitution, *except as limited by the terms of the statute.*") (emphasis added).

Here, the trial court had no jurisdiction over Concord because personal service was never accomplished. The default judgment and order of default entered against Concord are accordingly void. See Rodriguez v. James-Jackson, 127 Wn. App. 139, 143, 111 P.3d 271 (2005) ("Basic to litigation is jurisdiction, and first to jurisdiction is service of process. When a court lacks personal jurisdiction over a party, the judgment obtained against that party is void."); In re Marriage of Markowski, 50 Wn. App. 633, 635-36, 749 P.2d 754 (1988) ("Proper service of the summons and complaint is essential to invoke personal jurisdiction over a party, and a default judgment entered without proper jurisdiction is void.").

The Supreme Court's decision in Haberman v. Washington Public Power Supply System, 109 Wn. 2d 107, 177, 744 P.2d 1032 (1987) is instructive. In Haberman, the Supreme Court held that attempted out-of-state service by mail was insufficient under the long-arm statute, explaining:

As statutes authorizing service on out-of-state parties are in derogation of common law personal service requirements, they must be strictly pursued. See State ex rel. Hopman v. Superior Court, 88 Wash. 612, 617, 153 P. 315 (1915)

(comparing out-of-state service statutes to service by publication). The Washington long-arm statute was clearly not strictly pursued in the instant case. Mr. Patterson was not personally served, nor was the process delivered to a person of suitable age or discretion at his home. Rather, the summons and complaint were left outside the door of his house at a time when no one was present. Likewise, service upon Mr. Pardo was neither made upon him personally, nor upon a person of suitable age or discretion at his home. Rather, the summons and complaint were either mailed to him, or dropped off at his place of business.

109 Wn. 2d at 177-78. The Supreme Court affirmed the trial court's holding that service on those defendants was improper and that claims against them were therefore properly dismissed. Id. at 178.⁴

Ralph's argued in the trial court that RCW 4.28.185(2) was merely permissive, simply allowing personal service but not excluding other methods. That argument is directly contrary to the statutory text, which is strictly construed because out-of-state service is in derogation of the common law. Moreover, if Ralph's interpretation were correct, the

⁴ Accord Kennedy v. Korth, 35 Wn. App. 622, 668 P.2d 614 (1983) (noting that "[t]he general rule recognized in this state is that personal service is required in order to attain in personam jurisdiction over an individual defendant" and holding that the trial court committed reversible error by allowing plaintiff to serve a defendant residing in West Germany by mail instead of requiring personal service); Pascua v. Heil, 126 Wn. App. 520, 108 P.3d 1253 (2005) (in case arising out of motor vehicle accident in Washington, service upon Florida resident by publication and by mail was ineffective).

Supreme Court would necessarily have reached the opposite conclusion in Haberman and held that the other methods of service attempted by the plaintiffs in that case (including mailing) were sufficient. Instead, it held that personal service was required. Only the single method of personal service is authorized under the long-arm statute.⁵

Ralph's also suggested in the trial court that regardless of its failure to follow proper service procedures, the default judgment should not be set aside because Concord still received actual notice of the lawsuit. Mere receipt of process and actual notice alone do not establish valid service of process. Haberman, 109 Wn. 2d at 177 (citation omitted).

C. **Ralph's Argument to the Trial Court that Civil Rule 4(i) Authorizes Mailed Service is Patently Erroneous.**

Ralph's attempt to mail service to Concord was accompanied by a cover letter stating that service was being made pursuant to "the provisions of RCW 4.28.185 and Washington Court Rule 4(i)(D)." Ralph's argued in the trial court that mailed service was authorized and valid under Civil Rule 4(i). Ralph's argument is wrong.

⁵ Ralph's "permissive" interpretation would also allow any defendant attempting service under the long-arm statute, whether or not the defendant was in a foreign country, to use any method of service at all. That cannot be the law.

1. Civil Rule 4(i) is Inapplicable by its Plain Terms.

By its plain terms, CR 4(i) does not broaden the long-arm statute to include other methods of service. The alternate methods of service in CR 4(i) are available only “[w]hen a statute or rule authorizes service upon a party not an inhabitant of or found within the state.” CR 4(i).⁶ Civil Rule 4(i) is abundantly clear that it is not an independent grant of authority.

No service on Concord was ever authorized under the long-arm statute. As discussed above, service is not authorized unless and until a party complies with the RCW 4.28.185(4) affidavit requirement to establish that service cannot be effected in-state. Ralph’s never satisfied that requirement. And, even if an affidavit had been made, the long-arm statute authorized only a single specific method of service – personal service – in that circumstance. Thus, the CR 4(i) methods of service are unavailable to plaintiffs using the long-arm statute to gain jurisdiction.

⁶ Civil Rule 4 states in relevant part:

When a statute or rule authorizes service upon a party not an inhabitant of or found within the state, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made ... (D) by any form of mail, requiring a signed receipt, to

2. Civil Rule 4(i) Does Not, and Cannot, Independently Authorize Mailed Service on Concord.

Ralph's may suggest that CR 4(i) trumps the language of the Washington long-arm statute and authorizes mailed service even without the affidavit. That has it backward.⁷ The *method* of service is not relevant until service itself is authorized; service is not authorized until *after* the required affidavit is made. This court need not determine whether mailed service would have been a sufficient substitute for personal service because *no* out-of-state service was authorized in the first instance under the plain language of the long-arm statute.

Ralph's suggested interpretation would also lead to the entirely illogical result that a plaintiff could serve a foreign country defendant by mail in *every* case without ever establishing that personal service could not be made within Washington State. That result would be patently contrary to the strict construction given to out-of-state service rules, which are in derogation of the common law. Furthermore, it would effectively read the affidavit requirement out of the long-arm statute, in contravention to rules

be addressed and mailed to the party to be served.

⁷ Such an argument would also be terribly ironic. On one hand, Ralph's claims that Concord is doing business in Washington and is subject to jurisdiction. On the other hand, Ralph's argues it need not attempt to

of statutory construction rules requiring that statutes be interpreted to not render any terms superfluous or meaningless. Whatcom County v. Bellingham, 128 Wn. 2d 537, 546, 909 P.2d 1303 (1996).⁸

Interpreting CR 4(i) to allow mailed service when a plaintiff seeks to invoke long-arm jurisdiction would also impermissibly broaden the reach of the long-arm statute and a plaintiff's ability to serve out of state. Washington's long-arm statute authorizes the assertion of jurisdiction over foreign corporations only "to the extent permitted by the due process clause of the United States Constitution, except as limited by the terms of the statute." Shute v. Carnival Cruise Lines, 113 Wn. 2d 763, 766-67, 783 P.2d 78 (1989) (citation omitted). Ralph's cannot expand the long-arm statute's reach without running headlong into due process problems and the Washington Supreme Court's interpretation of the statute's limited

serve Concord in state or to establish by affidavit that in-state service cannot be accomplished. Ralph's cannot have it both ways.

⁸ Nor does the Hague Convention authorize service by mail, or make service by mail effective to establish long-arm jurisdiction, unless such service is otherwise authorized by the underlying state long-arm statute. See Broad v. Mannesmann Anlagenbau, A.G., 141 Wn. 2d 670, 678 n.5, 10 P.3d 371 (2000) ("The [Hague Convention] treaty is not a long-arm device providing for independent authorization for service abroad. Instead, it provides for methods of service when a state long-arm statute or a federal statute authorizes service abroad. Also, jurisdiction of the defendant must be established independent of the convention.").

scope. Default proceedings in particular must be carefully scrutinized for potential due process violations. Boyd, 115 Wn. App. at 415 (citing Schnell, 22 Wn. App. at 790-91).

Moreover, the jurisdiction of the superior courts is constitutional. State ex rel. New Washington Oyster Co. v. Meakim, 34 Wn. 2d 131, 208 P.2d 628 (1949); Wash. Const. Art. 4, § 6. Within their sphere of constitutional authority, courts have certain limited inherent powers, including the power to prescribe rules for procedure and practice. State v. Smith, 84 Wn. 2d 498, 501, 527 P.2d 674 (1974). However, courts cannot contradict the state constitution by court rule. Id.; Sackett v. Santilli, 146 Wn. 2d 498, 504-05, 47 P.3d 948 (2002). Similarly, the Legislature may not grant courts the authority to perform a function that is reserved exclusively to the legislature by the constitution. Under principles of separation of powers, “[t]he Legislature is prohibited from delegating its purely legislative functions.” Id. (citations omitted).

Interpreting CR 4(i) to authorize service by mail on Concord impermissibly expands the court’s own power beyond the constitutional limits mirrored in the long-arm statute and raises separation of powers concerns. Fortunately, this Court does not need to adopt that interpretation because no service is authorized in the first instance under

RCW 4.28.185 for the reasons discussed above, rendering CR 4(i) inapplicable.

Even if service were authorized, CR 4(i) and RCW 4.28.185 should be read “in such a way that they can be harmonized.” Washington State Council of County and City Employees v. Hahn, 151 Wn. 2d 163, 168-69, 86 P.3d 774 (2004) (citing Wash. State Bar Ass’n v. State, 125 Wn. 2d 901, 909, 890 P.2d 1047 (1995)).

Civil Rule 4(i) and RCW 4.28.185 are easily read in harmony in the manner suggested by Concord. Out-of-state service is in derogation of the common law, so the provisions for such service under the long-arm statute are narrowly construed. By its plain terms, the long-arm statute only provides for and authorizes a single method of service – personal service – and then only after the required affidavit has been made to establish that in-state service cannot be completed. CR 4(i) does not separately authorize service through other means; reading it to do so would create a direct conflict between the rule and the statute. Instead, the rule is read in harmony with the statute to not provide for service unless and until otherwise authorized by the long-arm statute, which it is not in this case.

3. Ralph's Reliance in the Trial Court on the *Marriage of Tsarbopoulos* Case is Misplaced.

Ralph's suggested in the trial court that simply mailing service (to the wrong address and to the attention of an unknown addressee) was sufficient under Division Three's decision in Marriage of Tsarbopoulos, 125 Wn. App. 273, 104 P.3d 692 (2004). Ralph's argument that Tsarbopoulos holds that CR 4(i) eliminated the personal service requirement of the long-arm statute in foreign countries is wrong. Tsarbopoulos was a dissolution action governed by the Uniform Child Custody Jurisdiction Act (UCCJA). Id. at 277. Indeed, the trial court in that case explicitly "found that the long-arm jurisdiction under RCW 4.28.185 did not apply factually." Id. at 280. The appellate court agreed, noting in dicta that "[t]he long arm statute, nevertheless, requires that the respondent be personally served." Id. at 285. In any case, the court's holding that mailed service was sufficient under the UCCJA has no bearing here.

D. The Trial Court Lacked Jurisdiction Because Concord Lacks Sufficient Minimum Contacts With Washington

Ralph's bears the burden of proving facts sufficient to establish that jurisdiction exists and that its exercise over Concord is reasonable. See, e.g., Walker v. Bonney-Watson Co., 64 Wn. App. 27, 32-33, 823 P.2d 518 (1992).

Because Washington's long-arm statute is coextensive with due process requirements for personal jurisdiction, the inquiry is whether jurisdiction over Concord comports with due process, which "requires that nonresident defendants have certain minimum contacts with the forum state, so that the exercise of personal jurisdiction does not offend traditional notions of fair play and substantial justice." Doe v. Am. Nat'l Red Cross, 112 F.3d 1048, 1050 (9th Cir. 1997) (citing Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L.Ed. 95 (1945)).

To satisfy due process and establish specific jurisdiction over Concord, Ralph's must establish that: (1) Concord purposefully did some act or consummated some transaction in Washington; (2) the cause of action arises from, or is connected with, that act or transaction; and (3) the exercise of jurisdiction by the forum state does not offend traditional notions of fair play and substantial justice. See Raymond v. Robinson, 104 Wn. App. 627, 637 (2001), citing Shute, 113 Wn. 2d at 767.

The trial court erred in concluding that Concord had sufficient minimum contacts with Washington such as to make the exercise of jurisdiction reasonable.⁹ The only evidence of jurisdiction offered by

⁹ It is impossible to determine from the present record what facts the trial

Ralph's in the current record is: (1) the existence of the contract between Ralph's and Concord, which is by itself insufficient as a matter of law to establish jurisdiction, and (2) the declaration of Don Carlson, which alleges a handful of sales contacts between Concord and Washington State.

That evidence is on its face insufficient to establish the first criterion of the jurisdictional test. That criterion requires a nonresident defendant to purposefully avail itself of the privilege of conducting activities within the forum state, thereby invoking the benefits and protections of its laws. Walker, 64 Wn. App. at 34 (citing Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 1239, 2 L. Ed. 2d 1283, reh'g denied, 358 U.S. 858, 79 S. Ct. 10, 3 L. Ed. 2d 92 (1958)). The quality and nature of the defendant's activities determine whether the contacts are sufficient, not the number of acts or mechanical standards. Id. (citing Nixon v. Cohn, 62 Wn. 2d 987, 994, 385 P.2d 305 (1963)).

The function of the purposeful availment requirement is to ensure that personal jurisdiction is not premised solely upon the defendant's random, isolated, or fortuitous contacts with the forum state. Holland Am.

court held established jurisdiction because the trial court's order included no findings, analysis or explanation.

Line Inc. v. Wartsila N. Am., Inc., 485 F.3d 450, 459, 462 (9th Cir. 2007); Terracom v. Valley Nat'l Bank, 49 F.3d 555, 560 (9th Cir. 1995). “[I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State.” Omeluk v. Langsten Slip & Batbyggeri A/S, 52 F.3d 267, 270 (9th Cir. 1995).

Concord has not purposefully availed itself of the privilege of conducting activities within Washington. Concord has no presence in Washington – it is not registered to do business here, it has no employees or facilities here, it has no property or bank accounts here, and it has never submitted itself to the court’s jurisdiction here. See Section III.A, supra.

Moreover, Concord never communicated, much less negotiated, with Ralph’s. The sale of the concrete pump in question was handled entirely by an independent broker. Whatever contacts that broker had with Ralph’s cannot be charged to Concord for jurisdictional purposes. See, e.g., Swavely v. Vandegrift, 397 Pa. 281, 154 A.2d 779 (Pa. 1959) (contacts with forum state by independent distributors and manufacturer’s representatives who were independent contractors of defendant could not be used to establish jurisdiction over defendant); see also Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S. Ct. 2174, 85 L. Ed. 2d 528

(1985) (“purposeful availment” requirement not satisfied by the “unilateral activity of another party or a third person” and requires that “the contacts proximately result from actions by the defendant *himself* that create a ‘substantial connection’ with the forum State”) (emphasis in original).

The fact that some of Concord’s products might enter Washington’s “stream of commerce” is insufficient to satisfy the purposeful availment requirement. See Holland Am., 485 F.3d at 459 (“The placement of a product into the stream of commerce, without more, is not an act purposefully directed toward the forum state.”) (citing Asahi Metal Indus. Co. v. Superior Ct., 480 U.S. 102, 112 (1987)); see also Walker, 64 Wn. App. at 34-36.

The mere existence of a sales agreement between Ralph’s and Concord is also insufficient to establish specific jurisdiction over Concord in Washington. See, e.g., CTVC of Hawaii, Co. Ltd. v. Shinawatra, 82 Wn. App. 699, 711, 919 P.3d 1243 (1996) (“[M]ere execution of a contract with a resident of this jurisdiction alone does not establish the purposeful act requirement”); Van Steenwyk v. Interamerican Management Consulting Corp., 834 F. Supp. 336, 340 (E.D. Wash. 1993) (“The existence of a contract between a resident of the forum state and a non-resident defendant is insufficient by itself to create personal

jurisdiction over the non-resident”); see also Mountaire Feeds, Inc. v. Agro Impex, S.A., 677 F.2d 651, 656 (8th Cir. 1982) (“[m]erely entering into a contract with a forum resident” is insufficient to satisfy due process).

Similarly, the course of dealing between Concord and Ralph’s does not establish sufficient minimum contacts between Concord and Washington State to make the exercise of jurisdiction reasonable or permissible. There were no direct dealings between the parties. The sale and delivery of the concrete pump was done by and through Mr. Carlson, an independent dealer not acting as Concord’s employee or agent. There are no plans for future business arrangements between Concord and Ralph’s.

Ralph’s cannot carry its burden to establish jurisdiction on these facts. See, e.g., Washington Equipment Mfg. Co., Inc. v. Concrete Placing Co., Inc., 85 Wn. App. 240, 248 (1997) (no long-arm jurisdiction in dispute over equipment sale contract, despite fact that buyer’s employees visited seller’s plant in Washington, made telephone calls to the seller in Washington, and took delivery of equipment at the seller’s Washington plant); CTVC of Hawaii, 82 Wn. App. at 711 (“To determine whether the defendant purposefully established minimum contacts by

entering into a contract with a resident of the forum state, the court must examine the circumstances of the entire transaction"; the parties' actual course of dealing, prior negotiations, contemplated future consequences, and terms of the contract were not enough to establish specific jurisdiction); Pedersen Fisheries, Inc. v Patti Industries, Inc., 563 F. Supp. 72, 74-76 (W.D. Wash. 1983) (no long-arm jurisdiction under Washington's long-arm statute over a Florida boat manufacturer sued because of a welding failure on a boat sold to a Washington corporation because the Florida company had no employees or place of business in Washington, the boat was made in Florida, and negotiations with manufacturer did not take place in Washington; the "defendant's purposeful interjection within the State of Washington was at best minimal").

For the same reasons, the exercise of jurisdiction over Concord in Washington State would offend traditional notions of fair play and substantial justice, rendering specific jurisdiction improper under the third prong of the test. In addition, there would be a substantial burden on Concord to defend suit here, given that Concord is incorporated and headquartered in Canada, owns no property of any kind in Washington

State, and has no employees or persons authorized to act on its behalf in this state.

Accordingly, the default judgment against Concord should be vacated for lack of personal jurisdiction. See Schnell, 22 Wn. App. at 792 (vacating default judgment after finding long-arm jurisdiction did not attach because “[a] judgment entered without valid personal jurisdiction over the defendant violates due process”).

At the very least, the Court should vacate the default judgment and entry of default and allow Concord to more fully develop the record on jurisdiction. Showalter v. Wild Oats, 124 Wn. App. 506, 510, 101 P.3d 867 (2004) (“Default judgments are generally disfavored in Washington based on an overriding policy which prefers that parties resolve disputes on the merits.”); see also Wilma v. Harsin, 77 Wn. App. 746, 749, 893 P.2d 686 (1995) (“Default judgments are not favored. Proceedings to vacate them are equitable in nature, and relief is liberally afforded in accordance with equitable principles. The guiding principle is whether justice is being served; what is just and proper depends upon the facts and circumstances of each case.”).

E. Concord is Entitled to Attorney's Fees under RCW 4.28.185(5)

A prevailing party served outside of the state is entitled to attorney's fees and costs under the long-arm statute. RCW 4.28.185(5). As this court recognized in ShareBuilder, *supra*, a out-of-state defendant who is successful in vacating a default judgment for lack of personal jurisdiction is entitled to reasonable attorney's fees and costs, especially when the plaintiff's "errors necessitated th[e] appeal." 137 Wn. App. 330, 337. Here, Ralph's errors render the default judgment against Concord void and necessitated both Concord's Motion to Vacate and this appeal. Concord is entitled to its fees and costs.

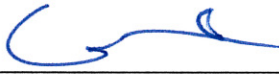
VI. CONCLUSION

Because Ralph's failed to satisfy the requirements of Washington's long-arm statute and to prove that Concord has the necessary minimum contacts with Washington to support specific jurisdiction, Concord respectfully requests that this Court reverse the superior court's March 31, 2009 order denying Concord's Motion to Vacate Default Judgment and Set Aside Entry of Default, thereby vacating the default judgment and setting aside the entry of default against Concord, then dismiss Ralph's complaint for lack of jurisdiction over Concord. Concord also respectfully requests that this Court award Concord its fees and costs under RCW 4.28.185(5).

DATED June 22, 2009.

Respectfully submitted,

RIDDELL WILLIAMS P.S.

By: 
Gavin W. Skok, WSBA No. 29766
Mindy L. DeYoung, WSBA No. 39424
Christopher Schenck, WSBA No. 37997
Attorneys for Appellant/Defendant
Concord Concrete Pumps, Inc.

NO. 63297-3-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

CONCORD CONCRETE PUMPS, INC.,

Appellant/Defendant,

v.

RALPH'S CONCRETE PUMPING, INC.,

Respondent/Plaintiff.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE PALMER ROBINSON
King County Superior Court No. 08-2-02714-7 SEA

APPENDIX TO OPENING BRIEF OF APPELLANT/DEFENDANT
CONCORD CONCRETE PUMPS, INC.

RIDDELL WILLIAMS P.S.
Gavin W. Skok, WSBA No. 29766
Mindy L. DeYoung, WSBA No. 39424
Christopher Schenck, WSBA No. 37997
1001 Fourth Avenue, Suite 4500
Seattle, Washington 98154-1065
Telephone: (206) 624-3600
Attorneys for Appellant/Defendant
Concord Concrete Pumps, Inc.

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APPENDIX 1

RCW 4.28.185

Personal service out of state — Acts submitting person to jurisdiction of courts — Saving.

(1) Any person, whether or not a citizen or resident of this state, who in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of said acts:

- (a) The transaction of any business within this state;
- (b) The commission of a tortious act within this state;
- (c) The ownership, use, or possession of any property whether real or personal situated in this state;
- (d) Contracting to insure any person, property or risk located within this state at the time of contracting;
- (e) The act of sexual intercourse within this state with respect to which a child may have been conceived;

(f) Living in a marital relationship within this state notwithstanding subsequent departure from this state, as to all proceedings authorized by chapter 26.09 RCW, so long as the petitioning party has continued to reside in this state or has continued to be a member of the armed forces stationed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the defendant outside this state, as provided in RCW 4.28.180, with the same force and effect as though personally served within this state.

(3) Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

(4) Personal service outside the state shall be valid only when an affidavit is made and filed to the effect that service cannot be made within the state.

(5) In the event the defendant is personally served outside the state on causes of action enumerated in this section, and prevails in the action, there may be taxed and allowed to the defendant as part of the costs of defending the action a reasonable amount to be fixed by the court as attorneys' fees.

(6) Nothing herein contained limits or affects the right to serve any process in any other manner now or hereafter provided by law.

[1977 c 39 § 1; 1975-'76 2nd ex.s. c 42 § 22; 1959 c 131 § 2.]

Notes:

Rules of court: Cf. CR 4(e), CR 12(a), CR 82(a).

Uniform parentage act: Chapter 26.26 RCW.

APPENDIX 2



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RULE 4 PROCESS

(a) Summons--Issuance.

(1) The summons must be signed and dated by the plaintiff or his attorney, and directed to the defendant requiring him to defend the action and to serve a copy of his appearance or defense on the person whose name is signed on the summons.

(2) Unless a statute or rule provides for a different time requirement, the summons shall require the defendant to serve a copy of his defense within 20 days after the service of summons, exclusive of the day of service. If a statute or rule other than this rule provides for a different time to serve a defense, that time shall be stated in the summons.

(3) A notice of appearance, if made, shall be in writing, shall be signed by the defendant or his attorney, and shall be served upon the person whose name is signed on the summons. In condemnation cases a notice of appearance only shall be served on the person whose name is signed on the petition.

(4) No summons is necessary for a counterclaim or cross claim for any person who previously has been made a party. Counterclaims and cross claims against an existing party may be served as provided in rule 5.

(b) Summons.

(1) Contents. The summons for personal service shall contain:

(i) the title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant;

(ii) a direction to the defendant summoning him to serve a copy of his defense within a time stated in the summons;

(iii) a notice that, in case of failure so to do, judgment will be rendered against him by default. It shall be signed and dated by the plaintiff, or his attorney, with the addition of his post office address, at which the papers in the action may be served on him by mail.

(2) Form. Except in condemnation cases, and except as provided in rule 4.1, the summons for personal service in the state shall be substantially in the following form:

SUPERIOR COURT OF WASHINGTON
FOR () COUNTY

_____)	
Plaintiff,)	No. _____
v.)	
_____)	SUMMONS (20 days)
Defendant.)	

TO THE DEFENDANT: A lawsuit has been started against you in the above entitled court by _____, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the

complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the State of Washington.

(signed) _____

Print or Type Name

() Plaintiff () Plaintiff's Attorney

P. O. Address _____

Dated _____ Telephone Number _____

(c) By Whom Served. Service of summons and process, except when service is by publication, shall be by the sheriff of the county wherein the service is made, or by his deputy, or by any person over 18 years of age who is competent to be a witness in the action, other than a party. Subpoenas may be served as provided in rule 45.

(d) Service.

(1) Of Summons and Complaint. The summons and complaint shall be served together.

(2) Personal in State. Personal service of summons and other process shall be as provided in RCW 4.28.080-.090, 23B.05.040, 23B.15.100, 46.64.040, and 48.05.200 and .210, and other statutes which provide for personal service.

(3) By Publication. Service of summons and other process by publication shall be as provided in RCW 4.28.100 and .110, 13.34.080, and 26.33.310, and other statutes which provide for service by publication.

(4) Alternative to Service by Publication. In circumstances justifying service by publication, if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication, the court may order that service be made by any person over 18 years of age, who is competent to be a witness, other than a party, by mailing copies of the summons and other process to the party to be served at his last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender. The summons shall contain the date it was deposited in the mail and shall require the defendant to appear and answer the complaint within 90 days from the date of mailing. Service under this subsection has the same jurisdictional effect as service by publication.

(5) Appearance. A voluntary appearance of a defendant does not preclude his right to challenge lack of jurisdiction over his person, insufficiency of process, or insufficiency of service of process pursuant to rule 12(b).

(e) Other Service.

(1) Generally. Whenever a statute or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu

of summons upon a party not an inhabitant of or not found within the state, service may be made under the circumstances and in the manner prescribed by the statute or order, or if there is no provision prescribing the manner of service, in a manner prescribed by this rule.

(2) Personal Service Out of State--Generally. Although rule 4 does not generally apply to personal service out of state, the prescribed form of summons may, with the modifications required by statute, be used for that purpose. See RCW 4.28.180.

(3) Personal Service Out of State--Acts Submitting Person to Jurisdiction of Courts. (Reserved. See RCW 4.28.185.)

(4) Nonresident Motorists. (Reserved. See RCW 46.64.040.)

(f) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the state, and when a statute or these rules so provide beyond the territorial limits of the state. A subpoena may be served within the territorial limits as provided in rule 45 and RCW 5.56.010.

(g) Return of Service. Proof of service shall be as follows:

(1) If served by the sheriff or his deputy, the return of the sheriff or his deputy endorsed upon or attached to the summons;

(2) If served by any other person, his affidavit of service endorsed upon or attached to the summons; or

(3) If served by publication, the affidavit of the publisher, foreman, principal clerk, or business manager of the newspaper showing the same, together with a printed copy of the summons as published; or

(4) If served as provided in subsection (d)(4), the affidavit of the serving party stating that copies of the summons and other process were sent by mail in accordance with the rule and directions by the court, and stating to whom, and when, the envelopes were mailed.

(5) The written acceptance or admission of the defendant, his agent or attorney;

(6) In case of personal service out of the state, the affidavit of the person making the service, sworn to before a notary public, with a seal attached, or before a clerk of a court of record.

(7) In case of service otherwise than by publication, the return, acceptance, admission, or affidavit must state the time, place, and manner of service. Failure to make proof of service does not affect the validity of the service.

(h) Amendment of Process. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) Alternative Provisions for Service in a Foreign Country.

(1) Manner. When a statute or rule authorizes service upon a party not an inhabitant of or found within the state, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory or a letter of request; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and mailed to the party to be served; or (E) pursuant to the means and terms of any applicable treaty or convention; or (F) by diplomatic or consular officers when authorized by the United States Department of State; or (G) as directed by order of the court. Service under (C) or (G) above may be made by any person who is not a party and is not less than 21 years of age or who is designated by order of the court or by the foreign court. The method for service of process in a foreign

country must comply with applicable treaties, if any, and must be reasonably calculated, under all the circumstances, to give actual notice.

(2) Return. Proof of service may be made as prescribed by section (g) of this rule, or by the law of the foreign country, or by a method provided in any applicable treaty or convention, or by order of the court. When service is made pursuant to subsection (1)(D) of this section, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(j) Other Process. These rules do not exclude the use of other forms of process authorized by law.

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APPENDIX 3

FILED

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

Honorable Palmer Robinson
Hearing date: February 20, 2009

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RALPH'S CONCRETE PUMPING,
INC., a Washington corporation,

Plaintiff,

v.

CONCORD CONCRETE PUMPS INC.,
a foreign corporation,

Defendant.

NO. 08-2-02714-7 SEA

DECLARATION OF ISIDRO FLORES
IN SUPPORT OF DEFENDANT
CONCORD CONCRETE PUMPS
INC.'S MOTION TO VACATE
DEFAULT JUDGMENT AND SET
ASIDE ENTRY OF DEFAULT

I, Isidro Flores, declare under penalty of perjury as follows:

1. I make this declaration based upon personal knowledge of the
matters stated herein, I am over the age 18 and am competent to testify.

2. I am President/Owner and CEO of Concord Concrete Pumps Inc.,
the defendant in this action. I held that position at all times relevant to this matter.

3. Concord is a Canadian corporation with its headquarters at 1608
Broadway St., Port Coquitlam, British Columbia, Canada. Concord is a family-

DECLARATION OF ISIDRO FLORES IN SUPPORT OF
CONCORD'S MOTION TO SET ASIDE DEFAULT JUDGMENT - 1
4846-7472-8147.02

Riddell Williams P.S.
1001 FOURTH AVENUE PLAZA
SUITE 4500
SEATTLE, WA 98154-1065
(206) 824-3600

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1 owned Canadian business that manufactures and sells concrete pump trucks for
2 use in various industrial and construction applications.

3 4. Concord is not a resident of the State of Washington and is not
4 registered to do business in Washington State.

5 5. Concord does not have a registered agent appointed to accept
6 service in Washington.

7 6. Concord has no offices in Washington State.

8 7. Concord has no employees in Washington State.

9 8. Concord maintains no bank accounts or other property in
10 Washington State.

11 9. Concord has never been a party to any lawsuit in any Washington
12 State court (other than this one), or submitted itself to the jurisdiction of
13 Washington courts in any other proceeding.

14 10. Plaintiff never personally served Concord with the Summons and
15 Complaint in this matter in Washington State. Plaintiff also never personally
16 served Concord with the Summons and Complaint at Concord's Canadian
17 headquarters in British Columbia.

18 11. Plaintiff attempted to accomplish service solely by mailing the
19 Summons and Complaint via Federal Express to Concord at its headquarters in
20 Coquitlam, British Columbia, Canada. Attached hereto as Exhibit A is a true and
21 correct copy of the cover letter, Summons, and Complaint mailed to Concord by
22 Plaintiff's counsel.

23 12. There is no Isadore Flores employed by Concord.

24 13. I understand that Plaintiff obtained a default judgment against
25 Concord in October 2008. Plaintiff attempted to enforce that judgment against
26 Concord in February 2009 by seizing a Concord concrete pump truck at an

FLORES DECLARATION IN SUPPORT OF CONCORD'S MOTION
TO SET ASIDE DEFAULT JUDGMENT - 2
4846-7472-8147.02

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SEATTLE, WA 98154-1065
(206) 624-3600



1 industry trade show in Nevada. The pump truck was released after Concord
2 posted a cash bond in the amount of \$180,000.00.

3 14. The concrete pump sale to Ralph's described in the Complaint was
4 solicited by an independent concrete pump broker, Don Carlson. Mr. Carlson was
5 not at the time, and never has been, a Concord employee. Mr. Carlson contacted
6 Ralph's on his own initiative, negotiated the terms of the sale with both sides
7 (Ralph's and Concord), and took possession of the disputed concrete pump from
8 Concord outside of Washington and delivered it to Plaintiff in Washington.
9 Concord did not directly negotiate or communicate with Plaintiff to arrange or
10 accomplish the sale.

11
12 I declare under penalty of perjury under all applicable laws that the
13 foregoing information is true and correct to the best of my knowledge, information
14 and belief.

15 Executed at Port Coquitlam, British Columbia, Canada this 10 day of
16 February, 2009.

17
18 
19 ISIDRO FLORES
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23
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26

FLORES DECLARATION IN SUPPORT OF CONCORD'S MOTION
TO SET ASIDE DEFAULT JUDGMENT - 3
4846-7472-6147.02

Riddell Williams P.S.
1001 FOURTH AVENUE PLAZA
SUITE 4500
SEATTLE, WA 98154-1065
(206) 624-3600

EXHIBIT A

THE DINCES LAW FIRM

Geoffrey P. Knudsen
Seattle: (206) 464-7335
Facsimile: (206) 464-9590

Pierce County Office
5314 28th Street NW
Gig Harbor, WA 98335

Seattle Office
316 Occidental Avenue South
Suite 500
Seattle, WA 98104-2874
Reply to: Seattle Office

February 8, 2008

VIA INTERNATIONAL POSTAL MAIL

Concord Concrete Pumps Inc.
1608 Broadway Street
Coquitlam, B.C.
Canada V3C-2M8
ATTN: Isadore Flores

Re: Ralph's Concrete Pumping, Inc. v. Concord Concrete Pumps Inc.
King County Cause No. 08-2-02714-7 SEA

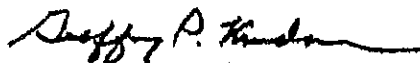
Dear Madam:

Enclosed please find a Summons and Complaint for the above referenced matter, along with a Case Information Cover Sheet and Order Setting Case Schedule. You are being served under the provisions of RCW 4.28.185 and Washington Court Rule 4(i)(D).

Please feel free to call me with any questions concerning this matter.

Very truly yours,

THE DINCES LAW FIRM



Geoffrey P. Knudsen, Of Counsel

GPK/sh
Enclosures

Honorable Palmer Robinson

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RALPH'S CONCRETE PUMPING, INC., a
Washington Corporation,

Plaintiff,

v.

CONCORD CONCRETE PUMPS INC., a
foreign corporation

Defendants.

NO. 08-2-02714-7 SEA

SUMMONS

TO THE DEFENDANT: Concord Concrete Pumps Inc.
1608 Broadway Street
Coquitlam, B.C. Canada
V3C-2M8

A lawsuit has been started against you in the above-entitled court by Plaintiff Ralph's Concrete Pumping, Inc., Plaintiff's claims are stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the plaintiff within 20 days after the service of the summons, excluding the day of service, or a default judgment

SUMMONS - 1

THE DINCES LAW FIRM
316 OCCIDENTAL AVENUE S., SUITE 500
SEATTLE, WA 98104
(206) 713-1287

1 may be entered against you without notice. A default judgment is one where plaintiff is entitled
2 to what they ask for because you have not responded. If you serve a notice of appearance on the
3 undersigned attorney, you are entitled to notice before a default judgment may be entered.
4

5 If you wish to seek the advice of an attorney in this matter, you should do so promptly so
6 that your written response, if any, may be served on time.

7 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State
8 of Washington.

9 DATED this 20th day of February, 2008.

11 THE DINCES LAW FIRM

13 By: Geoffrey P. Knudsen
14 Geoffrey P. Knudsen, WSBA #1324

15 Attorneys for Plaintiff Ralph's Concrete Pumping,
16 Inc.

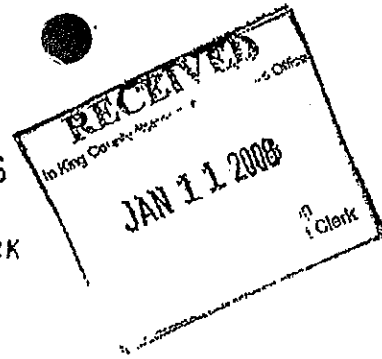
26 SUMMONS - 2

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(206) 713-1287

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RALPH'S CONCRETE PUMPING, INC., a
Washington Corporation,

Plaintiff,

v.

CONCORD CONCRETE PUMPS INC., a
foreign corporation,

Defendant.

NO. 08-2-02714-7 SEA

COMPLAINT FOR BREACH OF
CONTRACT

COMES NOW, plaintiff Ralph's Concrete Pumping, Inc. for its claims against defendant Concord Concrete Pumps Inc. and alleges as follows:

1. Plaintiff Ralph's Concrete Pumping, Inc. ("Ralph's") is a for profit Washington corporation with its principal place of business in unincorporated King County, Washington. Ralph's is in good standing, has all necessary licenses and has paid all applicable fees and taxes due the state.

COMPLAINT FOR BREACH OF CONTRACT - 1

THE DINCES LAW FIRM
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SEATTLE, WA 98104
(206) 713-1287

1 2. Defendant Concord Concrete Pumps Inc. ("Concord") is a foreign corporation
2 with its principal place of business in Port Coquitlam, British Columbia, Canada. Concord is
3 doing business in King County, Washington, although it is not licensed to do so.
4

5 3. King County is an appropriate venue for this action pursuant to RCW 4.12.025.
6

7 4. This court has jurisdiction over the subject matter of this action pursuant to RCW
8 2.08.010.
9

10 5. In October 2006, Concord's sales representative resident in the State of
11 Washington solicited Ralph's for the order of a 2007 32 meter Concord concrete pump, Model
12 3CCP-32Z5-170 on a 2007 Mack truck, Model MR 688S (the "Order") from Concord. The
13 purchase price for such Order, with credit for the trade-in of a 1997 Putzmeister 36 meter
14 concrete pump, Serial Number 21970600338, on a 1997 Mack 688S, was \$150,000.00. #
15

16 6. On or about November 10, 2006, Ralph's executed the Order as solicited and
17 forwarded the Order to Concord.
18

19 7. Concord accepted Ralph's Order and on November 16, 2006 Ralph's sent the
20 agreed purchase price of \$150,000.00 to Concord by an overnight delivery service.
21

22 8. Concord accepted Ralph's \$150,000.00 payment and accepted the trade-in of
23 Ralph's 1997 Putzmeister 36 meter concrete pump, Serial Number 21970600338, on a 1997
24 Mack 688S.
25

26 9. It was only after Concord had accepted Ralph's payment in full that Ralph's first
 learned from an invoice received by it on November 21, 2006 that Concord apparently intended

COMPLAINT FOR BREACH OF CONTRACT - 2

THE DINES LAW FIRM
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SEATTLE, WA 98104
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1 to deliver a 2006 32 meter Concord concrete pump on a 2006 Mack truck instead of a 2007
2 model as agreed and ordered. Ralph's promptly notified Concord's Washington sales
3 representative of the apparent error and was assured by him that Concord would remedy the
4 situation.
5

6 10. Contrary to the assurances that had been made, Concord delivered to Ralph's
7 business location in Seattle a 2006 32 meter Concord concrete pump on a 2006 Mack truck
8 instead of the 2007 32 meter Concord concrete pump on a 2007 Mack truck that had been
9 ordered.
10

11 11. Concord's delivery of a 2006 32 meter Concord concrete pump on a 2006 Mack
12 truck instead of the 2007 32 meter Concord concrete pump on a 2007 Mack truck as ordered and
13 agreed to be purchased constituted a breach of contract by Concord.
14

15 12. On information and belief, the value of a 2006 32 meter Concord concrete pump
16 on a 2006 Mack truck is at least \$100,000.00 less than the \$ 350,000.00 agreed purchase price of
17 the 2007 32 meter Concord concrete pump on a 2007 Mack truck that Ralph's paid in full to
18 Concord by virtue of the \$150,000.00 payment and trade-in.
19

20 13. Because Ralph's no longer had the pump it traded-in and in order to mitigate its
21 damages, Ralph's has been forced to use the 2006 32 meter Concord concrete pump on a 2006
22 Mack truck while attempting to get Concord to remedy its breach of contract.
23

24 14. Ralph's has tendered the return of the 2006 32 meter Concord concrete pump on a
25 2006 Mack truck to Concord for the return of the \$ 350,000 purchase price, but Concord has
26 refused.

COMPLAINT FOR BREACH OF CONTRACT - 3

THE DINCES LAW FIRM
316 OCCIDENTAL AVENUE S., SUITE 300
SEATTLE, WA 98104
(206) 713-1287

1 15. Ralph's has been damaged by Concord's breach of contract in an amount not less
2 than \$100,000.00, the precise amount to be subject to proof at trial
3

4 WHEREFORE plaintiff Ralph's Concrete Pumping, Inc. prays that judgment be entered
5 against defendant Concord Concrete Pumps Inc. for an amount of not less than \$100,000.00,
6 subject to proof of the precise amount at trial plus accrued interest from November 16, 2006, for
7 taxable costs of the action and for such other relief as the Court may deem just and proper.
8

9 DATED this 22 day of January, 2008.

10
11 THE DINCES LAW FIRM

12
13 By: Geoffrey P. Knudsen
14 Geoffrey P. Knudsen, WSBA #1324
15 Attorneys for Plaintiff Ralph's Concrete Pumping,
16 Inc.
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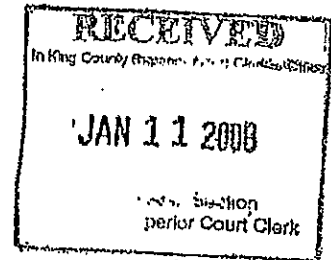
COMPLAINT FOR BREACH OF CONTRACT - 4

THE DINCES LAW FIRM
316 OCCIDENTAL AVENUE S., SUITE 500
SEATTLE, WA 98104
(206) 713-1287

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA



KING COUNTY SUPERIOR COURT
CASE ASSIGNMENT DESIGNATION
and
CASE INFORMATION COVER SHEET
(cics)

In accordance with LR82(e), a faulty document fee of \$15 will be assessed to new case filings missing this sheet pursuant to King County Code 4.71.100.

CASE NUMBER: 08-2-02714-7 SEA

CASE CAPTION: _____

I certify that this case meets the case assignment criteria, described in King County LR 82(e), for the:

☒ Seattle Area, defined as:

All of King County north of Interstate 90 and including all of the Interstate 90 right-of-way; all the cities of Seattle, Mercer Island, Bellevue, Issaquah and North Bend; and all of Vashon and Maury Islands.

☐ Kent Area, defined as:

All of King County south of Interstate 90 except those areas included in the Seattle Case Assignment Area.

Signature of Petitioner/Plaintiff

Date

or

Jeffrey P. Karsen
Signature of Attorney for
Petitioner/Plaintiff

January 2, 2008
Date

1324
WSBA Number

**KING COUNTY SUPERIOR COURT
CASE ASSIGNMENT DESIGNATION
and**

CASE INFORMATION COVER SHEET

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time but helps in forecasting judicial resources. A faulty document fee of \$15 will be assessed to new case filings missing this sheet pursuant to Administrative Rule 2 and King County Code 4.71.100.

APPEAL/REVIEW

- ☐ Administrative Law Review (ALR 2)*
- ☐ DOL Implied Consent—Test Refusal—only RCW 46.20.308 (DOL 2)*

CONTRACT/COMMERCIAL

- ☐ Breach of Contract (COM 2)*
- ☒ Commercial Contract (COM 2)*
- ☐ Commercial Non-Contract (COL 2)*
- ☐ Meretricious Relationship (MER 2)*
- ☐ with dependent children? Y / N; pregnant? Y / N
- ☐ Third Party Collection (COL 2)*

DOMESTIC RELATIONS

- ☐ Annulment/Invalidity (INV3)*
- ☐ with dependent children? Y / N; wife pregnant? Y / N
- ☐ Nonparental Custody (CUS 3)*
- ☐ Dissolution With Children (DIC 3)*
- ☐ Dissolution With No Children (DIN 3)*
- ☐ wife pregnant? Y / N
- ☐ Enforcement/Show Cause- Out of County (MSC 3)
- ☐ Establish Residential Sched/Parenting Plan(PPS 3)* ££
- ☐ Establish Supprt Only (PPS 3)* ££
- ☐ Legal Separation (SEP 3)*
- ☐ with dependent children? Y / N; wife pregnant? Y / N
- ☐ Mandatory Wage Assignment (MWA 3)
- ☐ Modification (MOD 3)*
- ☐ Modification - Support Only (MDS 3)*
- ☐ Out-of-state Custody Order Registration (FJU 3)
- ☐ Out-of-State Support Court Order Registration (FJU 3)
- ☐ Reciprocal, Respondent Out of County (ROC 3)
- ☐ Reciprocal, Respondent in County (RIC 3)
- ☐ Relocation Objection/Modification (MOD 3)*

ADOPTION/PATERNITY

- ☐ Adoption (ADP 5)
- ☐ Challenge to Acknowledgment of Paternity (PAT 5)*
- ☐ Challenge to Denial of Paternity (PAT 5)*
- ☐ Confidential Intermediary (MSC 5)
- ☐ Establish Parenting Plan-Existing King County Paternity (MSC 5)*
- ☐ Initial Pre-Placement Report (PPR 5)
- ☐ Modification (MOD 5)*
- ☐ Modification-Support Only (MDS 5)*
- ☐ Paternity, Establish/Disestablish (PAT 5)*
- ☐ Paternity/UIPSA (PUR 5)*
- ☐ Out-of-State Custody Order Registration (FJU 5)
- ☐ Out-of-State Support Order Registration (FJU5)
- ☐ Relinquishment (REL 5)
- ☐ Relocation Objection/Modification (MOD 5)*
- ☐ Rescission of Acknowledgment of Paternity (PAT 5)*
- ☐ Rescission of Denial of Paternity (PAT 5)*
- ☐ Termination of Parent-Child Relationship (TER 5)

DOMESTIC VIOLENCE/ANTI-HARASSMENT

- ☐ Civil Harassment (HAR 2)
- ☐ Confidential Name Change (CHN 5)
- ☐ Domestic Violence (DVP 2)
- ☐ Domestic Violence with Children (DVC 2)
- ☐ Foreign Protection Order (FPO 2)
- ☐ Sexual Assault Protection Order (SXP 2)
- ☐ Vulnerable Adult Protection (VAP 2)

££ Paternity Affidavit or Existing/Paternity is not an issue and NO other case exists in King County
 * The filing party will be given an appropriate case schedule
 ** Case schedule will be issued after hearing and findings.

**KING COUNTY SUPERIOR COURT
CASE ASSIGNMENT DESIGNATION
and**

CASE INFORMATION COVER SHEET

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time but helps in forecasting judicial resources. A faulty document fee of \$15 will be assessed to new case filings missing this sheet pursuant to Administrative Rule 2 and King County Code 4.71.100.

PROPERTY RIGHTS

- ☐ Condemnation/Eminent Domain (CON 2)*
- ☐ Foreclosure (FOR 2)*
- ☐ Land Use Petition (LUP 2)*
- ☐ Property Fairness (PFA 2)*
- ☐ Quiet Title (QTI 2)*
- ☐ Unlawful Detainer (UND 2)

JUDGMENT

- ☐ Confession of Judgment (MSC 2)*
- ☐ Judgment, Another County, Abstract (ABJ 2)
- ☐ Judgment, Another State or Country (FJU 2)
- ☐ Tax Warrant (TAX 2)
- ☐ Transcript of Judgment (TRJ 2)

OTHER COMPLAINT/PETITION

- ☐ Action to Compel/Confirm Private Binding Arbitration (MSC 2)
- ☐ Certificate of Rehabilitation (MSC 2)
- ☐ Change of Name (CHN 2)
- ☐ Deposit of Surplus Funds (MSC 2)
- ☐ Emancipation of Minor (EOM 2)
- ☐ Frivolous Claim of Lien (MSC 2)
- ☐ Injunction (INJ 2)*
- ☐ Interpleader (MSC 2)
- ☐ Malicious Harassment (MHA 2)*
- ☐ Non-Judicial Piling (MSC 2)
- ☐ Other Complaint/Petition (MSC 2)*
- ☐ Seizure of Property from the Commission of a Crime (SPC 2)*
- ☐ Seizure of Property Resulting from a Crime (SPR 2)*
- ☐ Structured Settlements (MSC 2)*
- ☐ Subpoena (MSC 2)

PROBATE/GUARDIANSHIP

- ☐ Absentee (ABS 4)
- ☐ Disclaimer (DSC4)
- ☐ Estate (EST 4)
- ☐ Foreign Will (FNW 4)
- ☐ Guardian (GDN4)
- ☐ Limited Guardianship (LGD 4)
- ☐ Minor Settlement (MST 4)
- ☐ Notice to Creditors - Only (NNC 4)
- ☐ Trust (TRS 4)
- ☐ Trust Estate Dispute Resolution Act/POA (TDR 4)
- ☐ Will Only—Deceased (WLL4)

TORT, MEDICAL MALPRACTICE

- ☐ Hospital (MED 2)*
- ☐ Medical Doctor (MED 2)*
- ☐ Other Health Care Professional (MED 2)*

TORT, MOTOR VEHICLE

- ☐ Death (TMV 2)*
- ☐ Non-Death Injuries (TMV 2)*
- ☐ Property Damage Only (TMV 2)*
- ☐ Victims Vehicle Theft (VVT 2)*

TORT, NON-MOTOR VEHICLE

- ☐ Asbestos (PIN 2)**
- ☐ Implants (PIN 2)
- ☐ Other Malpractice (MAL 2)*
- ☐ Personal Injury (PIN 2)*
- ☐ Products Liability (TTO 2)*
- ☐ Property Damage (PRP 2)*
- ☐ Wrongful Death (WDE 2)*
- ☐ Tort, Other (TTO 2)*

WRIT

- ☐ Habeas Corpus (WHC 2)
- ☐ Mandamus (WRM 2)**
- ☐ Review (WRV 2)**

* The filing party will be given an appropriate case schedule. ** Case schedule will be issued after hearing and findings.

L: forms/cashiers/clks
Rev 07/07

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RALPH'S CONCRETE PUMPING, INC.

vs

CONCORD CONCRETE PUMPS INC.

Plaintiff(s)

Defendant(s)

NO. 08-2-02714-7 SEA

Order Setting Civil Case Schedule (*ORSCS)

ASSIGNED JUDGE Robinson 41

FILE DATE: 01/11/2008

TRIAL DATE: 06/29/2009

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

I. NOTICES

NOTICE TO PLAINTIFF: The Plaintiff may serve a copy of this Order Setting Case Schedule (Schedule) on the Defendant(s) along with the *Summons and Complaint/Petition*. Otherwise, the Plaintiff shall serve the Schedule on the Defendant(s) within 10 days after the later of: (1) the filing of the *Summons and Complaint/Petition* or (2) service of the Defendant's first response to the *Complaint/Petition*, whether that response is a *Notice of Appearance*, a response, or a Civil Rule 12 (CR 12) motion. The Schedule may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

"I understand that I am required to give a copy of these documents to all parties in this case."

Print Name

Sign Name

Order Setting Civil Case Schedule (*ORSCS)

REV. 8/07 1

I. NOTICES (continued)

NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the King County Local Rules [KCLR] -- especially those referred to in this *Schedule*. In order to comply with the *Schedule*, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLR 26], and for meeting the discovery cutoff date [See KCLR 37(g)].

CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:

A filing fee of \$200 must be paid when any answer that includes additional claims is filed in an existing case.

SHOW CAUSE HEARINGS FOR CIVIL CASES [King County Local Rule 4(g)]

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. A review of the case will be undertaken to confirm service of the original complaint. A *Show Cause Hearing* will be set before the Chief Civil or RJC Judge if needed. The Order to Show Cause will be mailed to the plaintiff(s) or counsel to attend.

PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

All parties to this action must keep the court informed of their addresses. When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:

A Statement of Arbitrability must be filed by the deadline on the schedule **if the case is subject to mandatory arbitration** and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. Any party filing a **Statement** must pay a \$220 arbitration fee. If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$250 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

NOTICE OF NON-COMPLIANCE FEES:

All parties will be assessed a fee authorized by King County Code 4.71.050 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Rule 41.

King County Local Rules are available for viewing at www.metrokc.gov/kcsc.

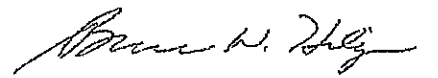
II. CASE SCHEDULE

CASE EVENT	DEADLINE or EVENT DATE	Filing Needed
Case Filed and Schedule Issued.	Fri 01/11/2008	*
Confirmation of Service [See KCLR 4.1].	Fri 02/08/2008	*
Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See KCLMAR 2.1(a) and Notices on Page 2]. \$220 arbitration fee must be paid	Fri 06/20/2008	*
DEADLINE to file Confirmation of Joinder if not subject to Arbitration. [See KCLR 4.2(a) and Notices on Page 2]. Show Cause hearing will be set if Confirmation is not filed or Box 2 is checked.	Fri 06/20/2008	*
DEADLINE for Hearing Motions to Change Case Assignment Area. [See KCLR 82(e)]	Mon 07/07/2008	
DEADLINE for Disclosure of Possible Primary Witnesses [See KCLR 26(b)].	Mon 01/26/2009	
DEADLINE for Disclosure of Possible Additional Witnesses [See KCLR 26(b)].	Mon 03/09/2009	
DEADLINE for Jury Demand [See KCLR 38(b)(2)].	Mon 03/23/2009	*
DEADLINE for Setting Motion for a Change in Trial Date [See KCLR 40(e)(2)].	Mon 03/23/2009	*
DEADLINE for Discovery Cutoff [See KCLR 37(g)].	Mon 05/11/2009	
DEADLINE for Engaging in Alternative Dispute Resolution [See KCLR 16(c)].	Mon 06/01/2009	
DEADLINE for Exchange Witness & Exhibit Lists & Documentary Exhibits [See KCLR 16(a)(4)].	Mon 06/08/2009	
DEADLINE to file Joint Confirmation of Trial Readiness [See KCLR 16(a)(2)].	Mon 06/08/2009	*
DEADLINE for Hearing Dispositive Pretrial Motions [See KCLR 56; CR 56].	Mon 06/15/2009	
Joint Statement of Evidence [See KCLR 16(a)(5)].	Mon 06/22/2009	*
Trial Date [See KCLR 40].	Mon 06/29/2009	

III. ORDER

Pursuant to King County Local Rule 4 [KCLR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action must serve this Order Setting Civil Case Schedule and attachment on all other parties.

DATED: 01/11/2008


PRESIDING JUDGE

IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE

READ THIS ORDER PRIOR TO CONTACTING YOUR ASSIGNED JUDGE

This case is assigned to the Superior Court Judge whose name appears in the caption of this Schedule. The assigned Superior Court Judge will preside over and manage this case for all pre-trial matters.

COMPLEX LITIGATION: If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

The following procedures hereafter apply to the processing of this case:

APPLICABLE RULES:

a. Except as specifically modified below, all the provisions of King County Local Rules 4 through-26 shall apply to the processing of civil cases before Superior Court Judges.

CASE SCHEDULE AND REQUIREMENTS:

A. Show Cause Hearing: A Show Cause Hearing will be held before the Chief Civil/Chief RJC Judge if the case does not have confirmation of service on all parties, answers to all claims, crossclaims, or counterclaims as well as the confirmation of joinder or statement of arbitrability filed before the deadline in the attached case schedule. All parties will receive an *Order to Show Cause* that will set a specific date and time for the hearing. Parties and/or counsel who are required to attend will be named in the order.

B. Pretrial Order: An order directing completion of a Joint Confirmation of Trial Readiness Report will be mailed to all parties approximately six (6) weeks before trial. This order will contain deadline dates for the pretrial events listed in King County Local Rule 16:

- 1) Settlement/Mediation/ADR Requirement;
- 2) Exchange of Exhibit Lists;
- 3) Date for Exhibits to be available for review;
- 4) Deadline for disclosure of witnesses;
- 5) Deadline for filing Joint Statement of Evidence;
- 6) Trial submissions, such as briefs, Joint Statement of Evidence, jury instructions;
- 7) voir dire questions, etc;
- 8) Use of depositions at trial;
- 9) Deadlines for nondispositive motions;
- 10) Deadline to submit exhibits and procedures to be followed with respect to exhibits;
- 11) Witnesses -- identity, number, testimony;

C. Joint Confirmation regarding Trial Readiness Report: No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g. interpreters, equipment), etc. If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff/petitioner's counsel is responsible for contacting the other parties regarding said report.

D. Settlement/Mediation/ADR:

- 1) Forty five (45) days before the Trial Date, counsel for plaintiff shall submit a written settlement demand. Ten (10) days after receiving plaintiff's written demand, counsel for defendant shall respond (with a counteroffer, if appropriate).
- 2) Twenty eight (28) days before the Trial Date, a settlement/mediation/ADR conference shall have been held. **FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.**

E. Trial: Trial is scheduled for 9:00 a.m. on the date on the *Schedule* or as soon thereafter as convened by the court. The Friday before trial, the parties should access the King County Superior Court website at www.metrokc.gov/kcsc to confirm trial judge assignment. Information can also be obtained by calling (206) 205-5984.

MOTIONS PROCEDURES:

A. Noting of Motions

Dispositive Motions: All Summary Judgment or other motions that dispose of the case in whole or in part will be heard with oral argument before the assigned judge. The moving party must arrange with the courts a date and time for the hearing, consistent with the court rules.

King County Local Rule 7 and King County Local Rule 55 govern procedures for all summary judgment or other motions that dispose of the case in whole or in part. The local rules can be found at www.metrokc.gov/kcsc.

Nondispositive Motions: These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the *Note for Motion* should state "Without Oral Argument." King County Local Rule 7 governs these motions, which include discovery motions. The local rules can be found at www.metrokc.gov/kcsc.

Motions in Family Law Cases not involving children: Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions Calendar. King County Local Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at www.metrokc.gov/kcsc.

Emergency Motions: Emergency motions will be allowed only upon entry of an *Order Shortening Time*. However, emergency discovery disputes may be addressed by telephone call, and without written motion, if the judge approves.

Filing of Documents All original documents must be filed with the Clerk's Office. *The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge.* The assigned judge's working copy must be delivered to his/her courtroom or to the judges' mailroom. Do not file working copies with the Motions Coordinator, except those motions to be heard on the Family Law Motions Calendar, in which case the working copies should be filed with the Family Law Motions Coordinator.

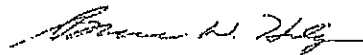
Original Proposed Order: Each of the parties must include in the working copy materials submitted on any motion an original proposed order sustaining his/her side of the argument. Should any party desire a copy of the order as signed and filed by the judge, a preaddressed, stamped envelope shall accompany the proposed order.

Presentation of Orders: All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department. Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. If final orders and/or formal proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.

C. Form: Memoranda/briefs for matters heard by the assigned judge may not exceed twenty four (24) pages for dispositive motions and twelve (12) pages for nondispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PETITIONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.



PRESIDING JUDGE

APPENDIX 4

FILED
KING COUNTY, WASHINGTON

Hon. Palmer Robinson

APR 01 2009

SUPERIOR COURT CLERK
BY TANNER M. COLE
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RALPH'S CONCRETE PUMPING, INC., a
Washington Corporation,

Plaintiff,

v.

CONCORD CONCRETE PUMPS INC., a
foreign corporation

Defendant.

NO. 08-2-02714-7 SEA

ORDER DENYING
DEFENDANT'S MOTION TO VACATE
DEFAULT JUDGMENT AND SET
ASIDE ENTRY OF DEFAULT

[PROPOSED]

THIS MATTER came before this Court on Defendant Concord Concrete Pumps Inc.'s
Motion to Vacate Default Judgment and Set Aside Entry of Default.

The Court having considered the following:

1. Defendant Defendant Concord Concrete Pumps Inc.'s Motion to Vacate Default
Judgment and Set Aside Entry of Default;
2. Declaration of Isidro Flores in Support of Defendant Concord Concrete Pumps Inc.'s
Motion to Vacate Default Judgment and Set Aside Entry of Default with exhibits attached thereto;
3. ~~Proposed Order Granting Defendant Concord Concrete Pumps Inc.'s Motion to Vacate
Default Judgment and Set Aside Entry of Default;~~ *RL*

ORDER DENYING DEFENDANT'S MOTION TO VACATE
DEFAULT JUDGMENT AND SET ASIDE ENTRY OF
DEFAULT - 1

THE DINCES LAW FIRM
316 OCCIDENTAL AVENUE S., SUITE 500
SEATTLE, WA 98104
(206) 713-1287
(206) 292-1790 Fax

1 4. Plaintiff's Memorandum in Opposition to Defendant's Motion to Vacate Default
2 Judgment and Set Aside Entry of Default and the Exhibits thereto;

3 Declaration of Geoffrey P. Knudsen dated May 7, 2008 (subjoined as page 3 to
4 the Motion for Order of Default (Dkt #6) and Exhibit A thereto;

5 Declaration of Donald E. Carlson in Opposition to Motion to Vacate Default
6 Judgment dated February 17, 2009;

7 Declaration of Gordon Phillips in Opposition to Motion to Vacate Default
8 Judgment dated February 17, 2009;

9 Declaration of Geoffrey P. Knudsen in Opposition to Motion to Vacate Default
10 Judgment dated February 17, 2009;

11 Declaration of Donald E. Carlson in Support of Plaintiff's Motion for Default
12 Judgment dated August 15, 2008 (Dkt #16);

13 Declaration of Vance R. Gribble in Support of Plaintiff's Motion for Default
14 Judgment dated August 6, 2008 (Dkt #15);

15 Declaration of Vance R. Gribble in Support of Ex Parte Application for Writ of
16 Attachment dated January 29, 2008 (without exhibits);

17 ~~5. Defendant's Reply (if any); and~~ *Defendant's Reply*

18 ~~6. The records and files herein.~~

19 The Court being fully advised in this matter it is hereby

20 ORDERED that Defendant's Motion to Vacate Default Judgment and Set Aside Entry of
21 Default is hereby DENIED.

22 DONE IN OPEN COURT this 23rd day of March, 2009.

23 *Palmer Robinson*
24 Honorable Palmer Robinson
25 King County Superior Court Judge
26

ORDER DENYING DEFENDANT'S MOTION TO VACATE
DEFAULT JUDGMENT AND SET ASIDE ENTRY OF
DEFAULT - 2

THE DINCES LAW FIRM
316 OCCIDENTAL AVENUE S., SUITE 500
SEATTLE, WA 98104
(206) 713-1287
(206) 292-1790 Fax

1 Presented by:

2 THE DINCES LAW FIRM

3
4 By: Geoffrey P. Knudsen

5 Geoffrey P. Knudsen, WSBA #1324

6 Attorneys for Plaintiff

Ralph's Concrete Pumping, Inc.

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ORDER DENYING DEFENDANT'S MOTION TO VACATE
DEFAULT JUDGMENT AND SET ASIDE ENTRY OF
DEFAULT - 3

THE DINCES LAW FIRM
316 OCCIDENTAL AVENUE S., SUITE 500
SEATTLE, WA 98104
(206) 713-1287
(206) 292-1790 Fax

NO. 63297-3-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

CONCORD CONCRETE PUMPS, INC.,

Appellant/Defendant,

v.

RALPH'S CONCRETE PUMPING, INC.,

Respondent/Plaintiff.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE PALMER ROBINSON
King County Superior Court No. 08-2-02714-7 SEA

CERTIFICATE OF SERVICE TO
OPENING BRIEF OF APPELLANT/DEFENDANT
CONCORD CONCRETE PUMPS, INC.

RIDDELL WILLIAMS P.S.
Gavin W. Skok, WSBA No. 29766
Mindy L. DeYoung, WSBA No. 39424
Christopher Schenck, WSBA No. 37997
1001 Fourth Avenue, Suite 4500
Seattle, Washington 98154-1065
Telephone: (206) 624-3600
Attorneys for Appellant/Defendant
Concord Concrete Pumps, Inc.

ORIGINAL

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 JUN 22 PM 4:18

CERTIFICATE OF SERVICE

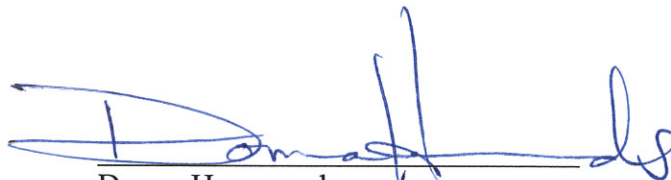
I, Donna Hammonds, an employee of Riddell Williams P.S., hereby declare that I am over eighteen years of age, am competent to testify, and that on June 22, 2009, I caused to be served a true and correct copy of the following:

- Opening Brief Of Appellant/Defendant Concord Concrete Pumps, Inc.;
- Appendix To Opening Brief Of Appellant/Defendant Concord Concrete Pumps, Inc; and
- this Certificate of Service thereto

upon the below following, via the hand delivery.:

Geoffrey P. Knudsen
THE DINCES LAW FIRM
316 Occidental Avenue South, Suite 500
Seattle, WA 98104

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 JUN 22 PM 4:18



Donna Hammonds